was) held that the Industrial Relations Act 1967 of our country is unique and it has no equivalent in India or elsewhere and it is best the authorities there can only be used as guide. Here the decision of the Supreme Court on this matter stares us in the face. I therefore hold that the Industrial Court had committed an error and I therefore grant prayer (1) in terms of the motion in enclosure (6).

I now deal with the 2nd issue whether receivers can be joined as parties in their personal capacity. My short answer is, I apply my judgment in *Bank Negara Malaysia v. Co-operative Central Bank Ltd.* [1994] 1 MLJ 170 and at p. 174 in this matter there cannot be the question of personal liability. The substance of which was they were appointed under the Emergency Regulations with a specific duty or task to perform, to nurture the said Co-operative Society to health with all public interest element as to the reason for their appointment and they work subject to the directions of the Central Bank and the Courts. From this they must formulate their actions and perform their difficult tasks within that constraint and framework. It is unjust to make the 2nd and 3rd applicants personally liable in the circumstances and if that were to happen it would certainly frighten away would be future receivers who genuinely wish to come and help in this rescue operation. Bearing in mind what I have stated above, I also hold that the Industrial Court had committed an error in making them parties with the clear intention of making them liable. I allow the 2nd prayer of the application in terms of the motion with costs, to the applicants with liberty to respondents to apply as to the question of costs.

WONG AH HEE @ WONG AH MOOI & ANOR.

v.

LOW TUCK HOONG

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CIVIL APPEAL NO. 11-16-92(92)]
13 SEPTEMBER 1993

PRACTICE AND PROCEDURE: Application to amend statement of defence and to include three new defendants and counterclaim - Amendment introducing new cause of action - Whether new cause of action founded on same or substantially same facts as original cause of action - Relief sought in the proposed amendment were never cited in original claim - Order 15 r. 1(5) Subordinate Court Rules 1980 - Whether Magistrate acted outside scope of the rules of Court under amendment.

STATUTORY INTERPRETATION: Construction of statutory provisions - Scope and duty of Court - Whether Court has power to fill gaps - Function of Legislature.

LAND LAW: Indefeasibility of title or interest in land - Whether indefeasibility absolute - Registered title or interest may be set aside or defeated by one with a better title and under exceptions - Jurisdiction of Court - Sections 340 and 417 of National Land Code 1965.

This was an appeal against the order of the learned Magistrate, Magistrate's Court, Sungai Siput (U) which allowed the application of the respondent/defendant to amend the statement of defence and to include three new defendants and a counterclaim.

Held:

[1] The amendments sought for by the respondent/defendant would entirely change the original suit and substitute it with a new cause of action. Rule 5 of O. 15 of the Subordinate Court Rules 1980 couched in clear and unambiguous words would clearly bar the reliefs sought for by the respondent/defendant.

[2] Generally, all amendments ought to be allowed for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings. In this case, the learned

Magistrate, in ordering the amendments, had acted outside the scope of O. 15 r. 5 of the Subordinate Court Rules 1980.

[3] In the event the pleadings were allowed to be amended at such a late stage, an irreparable damage would be incurred by the appellants/plaintiffs and no amount of costs would possibly compensate the appellants/plaintiffs.

[4] In the circumstances, the appeal was allowed with costs. The case was remitted to the learned Magistrate for him to dispose of the original action or suit.

[Appeal allowed with costs].

Cases referred to:
Government of Malaysia v. Mohamed Amin bin Hassan [1986] 1 MLJ 224 ***(dist)***
Magor & St. Mellons Rural District Council v. Newport Corporation [1952] AC 189 ***(refd)***
G.L. Baker Ltd. v. Medway Building & Supplies Ltd. [1958] 1 WLR 1216 ***(refd)***
Ponnusamy v. Nathu Ram [1959] MLJ 228 ***(refd)***
Teh Bee v. Maruthamuthu [1977] 2 MLJ 21 FC ***(cit)***
Ong Chat Pang & Anor. v. Valliappa Chettiar [1971] 1 MLJ 224 FC ***(cit)***
Che Dah v. Commissioner of Land Titles (Penang & Malacca) [1973] 2 MLJ 29 ***(cit)***
Land Executive Committee of Federal Territory v. Harper Gilfillan Bhd. [1981] 1 MLJ 234 FC ***(cit)***
Sungei Biak Tin Mines Ltd. v. Saw Choo Theng & Anor. [1970] 2 MLJ 226 FC ***(cit)***
Hock Hua Bank Bhd. v. Leong Yew Chin [1987] 1 MLJ 230 SC ***(refd)***
Sheriffa Taibah bte Abdul Rahman v. Lim Kim Som [1992] 2 SLR 516 ***(refd)***
Hipgrave v. Case [1885] 28 Ch. D 356 ***(cit)***
Loutf v. Czarnikow Ltd. [1952] 2 All ER 23 ***(cit)***

Legislation referred to:
National Land Code 1965, ss. 340(1), 417, 418
Rules of the High Court 1980, O. 15 r. 3(1), O. 20 r. 8
Subordinate Courts Act 1948, ss. 66(1), (2), 69(c), 93(1)
Subordinate Courts Rules 1980, O. 8 r. 3(1), (2), (3), (4)(a), (b), (c), (d), O. 15 rr. 1(5), 3(1), (2), 5
Rules of the Supreme Court 1965, O. 15 r. 3(1), O. 20 r. 8 (UK)

Other sources referred to:
Supreme Court Practice (1991) Vol. 1 p. 179, 363
Tenure and Land Dealings in the Malay States, David S.Y. Wong
White Book (Annual Practice 1957) p. 469, O. 28 r. 12

For the plaintiffs - Jeffrey Tan; M/s. Jeffrey Tan & Co.
For the respondent - Kamal; M/s. Maxwell, Kenion, Cowdy & Jones

JUDGMENT

Haji Abdul Malik bin Haji Ishak JC:

This is an appeal against the order of the learned Magistrate, Magistrate's Court, Sungai Siput (U), Perak, in allowing the application of the respondent/defendant under the relevant provisions of the Subordinate Courts Rules 1980 ("the SCR").

From the notice of application (see p. 59 of the appeal record), the respondent/defendant seeks the following orders:

(a) that the Government of the State of Perak, the Registrar of Title Perak and the Land Administrator Perak be added as and shall become defendants numbers two, three and four in this action;
(b) that the respondent/defendant's defence be amended by incorporating the counterclaim as set out in red ink in the pleadings attached as per enclosure 'A'. (The local practice is to underline the amendments in red ink);
(c) that the cause of the action be transferred to the High Court, Ipoh, Perak;
(d) costs of the application be costs in the cause.

The respondent/defendant's counterclaim as set out in enclosure 'A' averred that the title to the land comprised in Pajakan Mukim (M) No. 112, Lot No. 426, Mukim Sungai Siput, Perak (hereinafter referred as "Lot 426") issued to the plaintiffs were null and void as the boundaries determined by survey differed from that provisionally approved for alienation to the previous owner and that the plan was not referred to the State Authority for re-determination.

In the counterclaim, the respondent/defendant sought the following reliefs:

(1) a declaration that Lot 426 alienated to the plaintiffs be declared null and void;
(2) a declaration that Lot 426 (it was stated to be land held under final title as H.S. (M) 58-76, Lot No. 242 Mukim Sungai Siput, **but** infact it referred to no other than Lot 426) be alienated to the respondent/defendant;
(3) possession of Lot 426;
(4) an injunction on the plaintiffs from causing a nuisance and/or interfering with and/or preventing the respondent/defendant from the lawful enjoyment of Lot 426;

(5) further and other reliefs as the Court may deem fit and just, and;
(6) costs.

It must be noted that these reliefs, *inter alia*, sought for in the counterclaim of the respondent/defendant are against the additional three new defendants.

The grounds of the application are set out in the affidavit of the respondent/defendant. They are:

(1) that the additional three new defendants are involved in this action as they are responsible for the land matters in the State of Perak;
(2) that the amendments are necessary for the purpose of determining the real questions in controversy between the parties; and
(3) the application is solely to protect the interests of the respondent/defendant in Lot 426.

It is pertinent to note that the respondent/defendant's affidavit in support of his application, briefly, says that he needs the additional remedies and that he is advised to amend the statement of defence. But unfortunately no reasons were advanced as to why there was an inordinate delay to make an application of this nature.

It is abundantly clear from the appeal record that the appellants/plaintiffs had concluded its case and the respondent/defendant had also given his evidence. The learned Magistrate was at the stage of requiring both parties to submit at the close of the respondent/defendant's case. It was at that late stage that the learned Magistrate allowed the respondent/defendant's application in (a) and (b) as set out above, with costs given to the appellants/plaintiffs. The learned Magistrate then adjourned the case *sine die* (see p. 39 of the appeal record).

On perusal of the appeal record, the learned Magistrate addressed his mind wrongly to the requisite rules under the SCR. The relevant rules should be r. 3 of O. 8 and r. 3 of O. 15 of the SCR. Rule 3 of O. 8 of the SCR relates to counterclaim against additional parties and it reads thus:

> Order 8 r. 3
>
> (1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to r. 5 (2), he may, with the leave of the Court, join that other person as a party against whom the counterclaim is made.
> (2) An application for an order under paragraph (1) must be made by notice stating the grounds of the application and the name, address and occupation of that person, and supported by affidavit (if any).
> (3) Notice of the application must be served on the plaintiff and every other defendant (if any).
> (4) Where an order is made for the defendant to join that other person as a party -
>
> (a) the order must be in Form 14;
> (b) the other person must be added as and shall become a defendant to the counter-claim;
> (c) a memorandum of the order must be entered on the summons and in the Cause Book; and
> (d) the Court must fix a return day for the further hearing of the summons and may give such directions and make such orders for the further conduct of the proceedings.

Rule 3(1) of O. 8 SCR allows the respondent/defendant to apply to make the proposed three defendants as defendants to the counterclaim. It would appear that the respondent/defendant has complied with rr. 3(2) and 3(3) of O. 8 of the SCR when he made his application for amendments to the pleadings, and, consequently, the requirements of r. 3(4) of O. 8 of the SCR would automatically follow. Now, r. 3(1) of O. 8 of the SCR is in *pari materia* with r. 3(1) of O. 15 of the Rules of the High Court 1980 ("RHC") (equivalent to r. 3(1) of O. 15 of the English Rules of the Supreme Court 1965). The application of this rule is aptly stated in volume 1 of **The Supreme Court Practice (1991)** in particular at p. 179 as follows:

> ... that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of proceedings concerning any of those matters avoided. The procedure under this rule is alternative and additional to third party procedure under O. 16 and arises when the defendant makes a counterclaim against the plaintiff and an additional party or a co-defendant.

It is quite obvious on reading r. 3(1) of O. 8 of the SCR that so long as the conditions and circum-

stances enumerated thereunder have been complied with then the rule applies. Technically, on perusal of the proposed amended defence and counterclaim, I am of the opinion that the respondent/defendant has complied and satisfied r. 3(1) of O. 8 of the SCR.

The marginal note of r. 3 of O. 8 of the SCR makes a cross-reference and refers to r. 3 of O. 15 of the SCR. Clearly, therefore both rules are intended to be read together. Rule 3 of O. 15 of the SCR reads thus:

> Order 15 r. 3
>
> (1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings, either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
> (2) This rule shall not have effect in relation to a judgment or order.

Now, r. 3 of O. 15 of the SCR is in *pari materia* with r. 8 of O. 20 of the RHC (which is equivalent to r. 8 of O. 20 of the English Supreme Court Rules 1965). It is stated in volume 1 of the **Supreme Court Practice (1991)** in particular at p. 363 as follows:

> The generality of r. 8 applies as well to writs and pleadings as to other documents. There is no difference in substance between the Court giving leave to amend under rr. 5 and 7, and the Court making an order that an amendment be made under r. 8.

My understanding of r. 3 of O. 15 of the SCR is that it gives the learned Magistrate the general power to grant leave for amendment of any document except a judgment or order. Thus, if the learned Magistrate grants leave under r. 3 of O. 8 of the SCR for the proposed three defendants to be added as additional parties in the counterclaim, it must necessarily follow, as the night the day, that leave should similarly be granted for the consequential amendment under r. 3(1) of O. 15 of the SCR. My attention was drawn to the case of *Government of Malaysia v. Mohamed Amin bin Hassan* [1986] 1 MLJ 224 by learned Counsel for the appellants/plaintiffs, but after anxiously reading that case, I found that it is of no assistance at all as that case did not specifically consider r. 3 of O. 8 of the SCR or r. 3 (1) of O. 15 of the SCR.

I am satisfied, on perusal of the appeal record that technically the respondent/defendant has satisfied r. 3 (1) of the O. 15 of the SCR. But that is not the end of the matter.

It has been urged upon me by learned Counsel for the respondent/defendant that the additional reliefs claimed arise out of the original suit. It was also his submission that the respondent/defendant falls under and within the purview of r. 1(5) of O. 15 of the SCR. The learned Counsel for the appellants/plaintiffs rightly pointed out that the dispute revolves on the words "relief has already been claimed" appearing in r. 1(5) of O. 15 of the SCR and he argued further that, in the present appeal, there was no such relief in the original claim. From the recital of the facts as stated earlier, the reliefs sought for were never cited in the original claim but found its way in the application to amend the pleadings. It was urged upon me, therefore, that r. 1(5) of O. 15 of the SCR should be construed strictly. Rule 1(5) of O. 15 of the SCR reads as follows:

> Order 15 r. 1(5)
>
> An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

It is now trite law that in construing a statute the duty of the Court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed. To do so would tantamount to usurping the function of the legislature. Lord Simonds in *Magor & St. Mellons Rural District Council v. Newport Corporation* [1952] AC 189 had this to say:

> The duty of the Court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited ...

Thus, on perusal of r. 5 of O. 15 of the SCR couched in clear and unambiguous words would clearly bar the reliefs sought for by the respondent/defendant. The amendments sought for

would entirely change the original suit and substitute it with a new cause of action. The learned Magistrate, in ordering the amendments, had acted outside the scope of r. 5 of O. 15 of the SCR. It is correct to say that generally, all amendments ought to be allowed "for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings": per Jenkins LJ in *G.L. Baker Ltd. v. Medway Building & Supplies Ltd.* [1958] 1 WLR 1216, 1231. In addition, it is particularly germane for the present appeal to state that if the respondent/defendant has from the beginning formulated his writ which, though defective in some respect, reasonably identify the party suing or sued which is capable of conveying the capacity of the party to sue or which permits the addition or substitution of another cause of action, then it could be caught within the ambit of r. 5 of O. 15 of the SCR. In other words, the matters of identity, capacity or cause of action are already asserted or implied, from the inception of the writ or the filing of the pleading and it is merely a matter of correction to make explicit what is implicit.

It was urged upon me that the learned Magistrate fell in error when he allowed the amendments to the pleadings. It was an exercise in futility as the amendments changed entirely the character of the original action or suit.

The original action or suit was for vacant possession of Lot 426 and for trespass thereon with the usual consequential remedy of *mesne* profits at the rate of RM200 per month. The appellants/plaintiffs had title to Lot 426. But the proposed amendments averred that the State had wrongly alienated Lot 426 to the appellants/plaintiffs; that three additional defendants should be added as parties to the suit and that by way of counterclaim, declarations were sought together with an injunction. Surely on the face of it, the proposed amendments had drastically changed the character of the original action or suit. If that is not changing the character of the original action or suit, what else is?

It was further urged upon me that the learned Magistrate had failed to consider the materiality and effectiveness of the amendments in the context of its usefulness. Now, on this score, I need only cite the case of *Ponnusamy v. Nathu Ram* [1959] MLJ 228 where Good J. said that in an application to amend the pleadings, the Court should consider the materiality and the effectiveness of the amendment, and that it was a well established practice not to allow an amendment where it appeared that such an amendment would be useless. It was further held that the Court should look at the probable consequences of the amendment and if the amendment would be ineffectual then it ought not to be allowed to be made.

The counterclaims against the three additional defendants would not affect the indefeasible title to Lot 426 vested in the appellants/plaintiffs. It is trite law that under the torrens system of registration, the party in whose favour the registration has been effected will obtain an indefeasible title to or interest in the land (s. 340 (1) of the National Land Code 1965), that is, a title or an interest which is free of all adverse claims or encumbrances not noted on the register (see David S.Y. Wong in **Tenure and Land Dealings in the Malay States**; *Teh Bee v. Maruthamuthu* [1977] 2 MLJ 21 FC and *Ong Chat Pang Anor. v. Valliappa Chettiar* [1971] 1 MLJ 224 FC). However, indefeasibility is not absolute for under certain circumstances as spelt out under s. 340 of the National Land Code 1965, a registered title or interest may be set aside or defeated by one with a better title. Unfortunately, this was not the case here and at no time was this taken up by the respondent/defendant. This brings me to the declarations that Lot 426 alienated to the appellants/plaintiffs be declared null and void and that the said lot be alienated to the respondent/defendant. In the face of the short recital of the law on indefeasibility of title, an application of this nature would take it outside the scope of the original action or suit. The appropriate forum for declarations of this nature would be the High Court and not the Magistrate's Court. The general powers of the High Court are contained in s. 417 of the National Land Code 1965 which are exercisable whether on appeal or in an original application (see *Che Dah v. Commissioner of Land Titles (Penang & Malacca)* [1973] 2 MLJ 29 at 31). On the other hand, s. 418 of the National Land Code 1965 which makes provision for appeals to the High Court, provides in effect that if the proprietor or other claimant to any land or interest is aggrieved by any decision of the State Director, Registrar or Land Administrator in respect of any application, matter or thing under the National Land Code 1965, the said proprietor or claimant may, within three

months of the date of communication of the decision to him, appeal from the said decision to the High Court (Land Executive Committee of Federal Territory v. Harper Gilfillan Bhd. [1981] 1 MLJ 234 FC). For the nature and scope of s. 417 of the National Land Code 1965 see the case of *Sungei Biak Tin Mines Ltd. v. Saw Choo Theng & Anor.* [1970] 2 MLJ 226 FC. I am sure the learned Counsel for the respondent/defendant would know what to do next.

Thus, before the learned Magistrate, the only issue that fell for consideration was whether the appellants/plaintiffs were entitled to vacant possession of Lot 426.

I agree with the learned Counsel for the appellants/plaintiffs, that the learned Magistrate failed to consider the delay in making the application nor did he take into account the likelihood of prejudice to the appellants/plaintiffs and the question of *mala fide* in making the application (see *Hock Hua Bank Bhd. v. Leong Yew Chin* [1987] 1 MLJ 230 SC, where Syed Agil Barakbah SCJ (as he then was) said: "In considering any amendment, the Court will have regard to any undue delay or whether the application is made *mala fide* or whether such amendment will in any way unfairly prejudice the other party.")

In the present appeal, both parties had closed their case before the learned Magistrate and, if at all, an application of this nature should be made, at the latest, it should be before the defence gave evidence.

On this point Michael Hwang JC in *Sheriffa Taibah bte Abdul Rahman v. Lim Kim Som* [1992] 2 SLR 516 had this to say:

> I disallowed this application for various reasons. In the first place, it was an amendment which should have been applied for much earlier, at the latest before the defence witnesses gave evidence. Jacob and Goldrein on **Pleadings, Principles and Practice** states (at p. 196):
>
> > The Court is reluctant to give leave at a late stage of the trial unless, there is strong justification for doing so. Accordingly such leave will as a rule be refused after the close of evidence on both sides.

It must be appreciated that the Court will not readily allow at the trial an amendment, the necessity for which was abundantly apparent long before the hearing and then not asked for (*Hipgrave v. Case* [1885] 28 Ch. D 356). In the present appeal, learned Counsel for the respondent/defendant should, by a show of diligence, have detected the need to amend the pleadings even before the trial (the learned Counsel that acted for the respondent/defendant was a different one from the one that argued this appeal before me). Generally, the Court will be reluctant to give leave to amend pleadings at a late stage of the proceedings, unless there is strong justification for so doing (*Loutf v. Czarnikow Ltd.* [1952] 2 All ER & 23). In the present appeal, the respondent/defendant has not shown to the Court strong justification warranting his application to amend the pleadings.

At p. 469 of the **White Book (Annual Practice 1957)** under the heading of "Particulars" under O. 28 r. 12, it is stated that:

> An application to amend or add to particulars if made a reasonable time before the trial, will generally be allowed on terms (*Yorkshire Provident Co. v. Gilbert* [1895] 2 QB 148; *Emden v. Burns* 10 TLR 400), unless some injury would be caused by such amendment which could not be sufficiently compensated by the payment of costs (*Clarapede v. Commercial Union Association* 32 WR 262 CA).

The learned Magistrate should microscopically examine the amended pleadings and he would surely discover that it would turn a suit of one character into a suit of another and an inconsistent character. This manifestly is not permissible under the rules of the SCR. No amount of costs could possibly compensate the appellants/plaintiffs in the event the pleadings were allowed to be amended at such a late stage. An irreparable damage would be incurred by the appellants/plaintiffs.

Next, it was argued that by virtue of ss. 69(c) read with 93 (1) of the Subordinate Courts Act 1948 the learned Magistrate has no jurisdiction to grant the relief of an injunction sought for by the respondent/defendant in the proposed amended pleadings. It is quite obvious that the learned Magistrate was under an impression that he had the jurisdiction to adjudicate on an issue pertaining to an injunction. This is what he said:

> In this present instance, the question of the relief of injunction, though in excess of jurisdiction of the Magistrate's Court could still be adjudicated upon by the said Court.

Clearly, therefore, the learned Magistrate had misread and misunderstood the restrictions

imposed on him by s. 69(c) of the Subordinate Courts Act 1948. The learned Magistrate has no power to grant the injunction sought for by the respondent/defendant and therefore it was an exercise in futility for him to have allowed the amendments. In this context, s. 66(1) of the Subordinate Courts Act 1948 cannot right the wrong that was done by the learned Magistrate. Since there was no application by any party for this Court to exercise its discretion under s. 66(2) of the Subordinate Courts Act 1948, I do not propose that the action be transferred to this Court. The issues before the learned Magistrate as can be seen from the recital of the facts in the original action are simple and straight forward and could easily be dealt with by him. In the circumstances, I allow this appeal with costs. The case is remitted to the learned Magistrate for him to dispose of the original action or suit within a week from today.

YAP SENG HOCK & ANOR.

v.

UNITED ASIAN BANK BHD. & ANOR.

HIGH COURT, MUAR
TUAN RICHARD TALALLA J.
[ORIGINATING SUMMONS NO. 24-93-89]
9 NOVEMBER 1992

CONTRACT: Loan agreement - Joint and several liability of guarantors - Apportionment of liability - Compromise - Whether defendant agreed to compromise - Allegation of compromise based on unilateral statement in letter - Other positive evidence not adduced - Whether unilateral statement of agreement per se sufficient to constitute a binding contract.

EVIDENCE: Presumption of adverse inference - Evidence Act, 1950 s. 114(g) - Defendant failed to produce material witness and document - Whether presumption arose - Allegation that contents of letter constituted a binding contract - Burden of proof - Contracts Act 1950, ss. 101, 102, 103.

The first defendant (the Bank) had obtained summary judgement for RM1,028,726.02 (the original sum) against the plaintiffs and the second defendant in respect of a loan advanced by the Bank. By a consent order the original sum was varied whereby the joint and lateral liabilities of the parties were reduced to RM750,000 (the judgement sum). A clause in the consent order stated that in default of payment of the judgement sum the original sum shall be payable to the Bank forthwith.

On 13 December 1988 the plaintiffs' solicitor wrote to the Bank's solicitor enclosing payment of RM200000 as partial satisfaction of that portion of the plaintiffs' liability under the consent order, which the letter claimed to have been agreed by the Bank as being limited to RM500000 with the remaining RM250000 to be borne by the second defendant. On receipt of the letter and as therein requested, the Bank's solicitor on that same day wrote to the Senior Assistant Registrar and withdrew execution proceedings against the plaintiffs. Again on that same day the Bank's solicitor wrote to the Bank informing the bank that the plaintiffs would pay another RM300000 by 20 December 1988 and that the plaintiffs had requested for a meeting between the parties concerned to negotiate payment of the balance sum. This letter was copied to the plaintiffs' solicitor. On 27 December 1988 plaintiffs paid the Bank the promised RM300000.